IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3578 of 1996
With
SPECIAL CIVIL APPLICATION No. 2148 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SB JOSHI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PRADEEP PATEL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1, 3,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/06/2006

ORAL JUDGMENT

1. The petitioner is common in both the petitions.

In Special Civil Application No.3578/1996, he is challenging an order dated 13-10-1995 passed by the State Government imposing a cut in pension of Rs.25/-per month for a period of one year. This was pursuant to a departmental inquiry conducted against the petitioner, initiation of which was done when he was still in Government service, but completed after he retired from service on superannuation.

2. In Special Civil Application No.2148/1995, the petitioner has challenged a similar penal order of imposing a cut of Rs.50/- per month from his pension for a period of five years which order was passed by the Government on 28-12-1994.

3. Upon perusal of the order dated 13-10-1995, it can be seen that charge-sheet was issued against the petitioner on 25-3-1983. The allegations included those of negligence in discharge of duties as Deputy Engineer. The period involved was of 1978. After issuance of charge-sheet and representation by the petitioner on 14-08-1984,

the Inquiry Officer's report was prepared only on 31-1-1991. Thereafter some more time was spent before final order came to be passed on 13-10-1995.

4. I have perused the material on record. I find that the charges were of nature which cannot be termed as serious. If anything there was some allegation of the petitioner not being vigilant in discharge of his duties. No monetary loss is said to have been caused to the Government. The period of delinquency was also of 1978 and thereabouts for which long after retirement of the petitioner, inquiry concluded and ultimately order came to be passed on 13-10-1995 deducting Rs.25/- per month from the pension paid to the petitioner for a period of one year. The penalty itself demonstrates that charges were really not of serious nature. For such allegations, I do not think that Government should have chased the petitioner long after his retirement by protracted departmental proceedings. If there was anything serious about allegations, same

would have been reflected in the quantum of punishment. Considering all these aspects of the matter, I do not think that penalty can be sustained.

5. Very similar are the facts in Special Civil Application No.2148/1995. Here also for some alleged instances of year 1977-1978 or thereabouts, a charge-sheet came to be issued against the petitioner on 2-6-1983. Inquiries continued long after his retirement 5-5-1987. Inquiry Officer submitted his report on 31-7-1989. This appears to have been supplied to the petitioner vide communication dated 8-6-1990. Shortly, thereafter, the petitioner made his representation on 22-8-1990. A final order of penalty came to be passed on 28-12-1994. Here also charges were of general nature. It was generally stated that for a particular work executed by the Government through the petitioner, he had not properly verified the register of use of cement and thereby failed to discharge his supervisory duties. Besides the

charges being vague, same are also not suggesting either doubtful integrity on the part of the petitioner or monetary loss to the Government. For such charges, the petitioner who retired in the year 1987 ought not to have been proceeded against by such prolonged inquiry. As noted earlier for the charges pertaining to period prior to 1980, the charge-sheet itself came to be issued in May 1993 and oral inquiry was completed on 31-7-1989 while final order came to be passed on 28-12-1994.

6. Combined effect of these factors would be that here also I am unable to uphold the order of punishment. Reliance was placed by the learned advocate of the petitioner on the decision of this Court in the case of Shri M.N. Mewada v/s. State of Gujarat and another reported in 1976(2) SLR 666, wherein Division Bench of this Court was of the opinion that against retired employees, departmental inquiry should not be unduly prolonged.

7. By an order dated 23-6-2006, passed in Special Civil Application No.3485/1995, this Court under somewhat similar circumstances has passed the order.

8. Considering all these aspects of the matter, both the petitions are required to be allowed. The impugned orders of penalty dated are quashed. Rule made absolute with no order as to costs.

(Akil Kureshi,J.)

(raghu)